IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3340 OF 2006

Jagatmohan Mehta ..Applicant
Age : 59 years, residing at
Kiran Building, 1st floor,
Plot No.68, Ranade Road, Dadar,
Mumbai – 400 028

V/s.

1. The State of Maharashtra ..Respondents

2. Bharat Balkrishna Parekh
Age : 60 years, residing at
12, Om Dipti Co.operative HSG.
Carter Road No.7, Borivali(E),
Mumbai – 400 066

Ms.Sharmila Kaushik for Applicant
Shri.U.V.Nikam, A.P.P.

CORAM : A.S.OKA, J.

DATE : DECEMBER 21ST, 2006

ORAL JUDGMENT

1. The Applicant has filed this application under Section 482 of the Code of Criminal Procedure , 1973 (Hereinafter referred to as “the said Code of 1973”). By this application a prayer is made for quashing a Criminal case against the applicant on the basis of the F.I.R. lodged by the second

respondent.

2. The second Respondent lodged the F.I.R. vide C.R.No.87/2000 on 7th September, 2000 with the Economic Offences Wing, C.I.D., Mumbai alleging commission of offences under Sections 420, 406, 408, 468, 471, 477(A), 120(B) read with 34 of the Indian Penal Code. The Applicant and other three persons were shown as accused in the said case. The allegation made in the F.I.R. is that the accused acting in conspiracy opened a Bank Account in the name of a firm having similarity with the firm of the second respondent by the name M/s.Shiva Transport and a Demand Draft in the sum of Rs.1,90,000,00/- issued in favour the firm of the second Respondent was deposited in the said account. Further, allegation is that the accused had withdrawn the said amount from the said account. It is further alleged against the Applicant and another co-accused Rajesh that they utilised a sum of Rs.2,24,000,00/- belonging to M/s.Shiva Transport Company Pvt. Ltd. between the period from September, 1993 to January, 1996. The

allegation against the applicant and co-accused is of misappropriation of a large amount.

3. The submission of the learned counsel for the Applicant is that there was a subsequent settlement by and between the Applicant and the second Respondent which was reduced into writing in the form of a Deed of Settlement dated 17th July, 2002. It is pointed out that under the said Deed of Settlement, the second Respondent agreed to accept a sum of Rs.10,00,000/- from the Applicant by installments as mentioned in the said Agreement. My attention was invited to a letter dated 17th July, 2002 written by the second respondent to the Senior Inspector of police, Economic Offences Wing , C.I.D., Mumbai. In the said letter, the second respondent has re-iterated the fact that there is a complete settlement between the Applicant and the second Respondent. The learned advocate invited my attention to the order dated 24th November, 2005 passed in Criminal Application No.3466 of 2005 by which the Criminal case lodged on the basis of the same F.I.R. was quashed as

against a co-accused. The learned advocate for the Applicant pointed out that after filing of this application, the second Respondent has expired and hence, notice could not be served to the second respondent.

4. On 19th December, 2006, the learned Additional Public Prosecutor sought time to verify whether there was a settlement between the Applicant and the second Respondent and whether the second Respondent was dead. Today, on instructions of the concerned officer, the learned A.P.P states that the second Respondent has expired. On instructions he also confirmed that the letter dated 17th July, 2002 ("Exh.C" to this Application) was submitted by the second Respondent to the Senior Inspector of police, Economic Offences Wing, C.I.D., Mumbai. The learned A.P.P submitted to the order of this Court.

5. I have considered the submissions. Perusal of a copy of Settlement Deed dated 17th July, 2002 discloses that there was a complete settlement

between the Applicant and the second Respondent in consideration of the Applicant paying a sum of Rs.10,00,000/- to the second Respondent. The said agreement specifically refers to the F.I.R. bearing C.R.No.87/2000 lodged by the second Respondent. By the said agreement, the second respondent agreed not to pursue the case filed on the basis of the said F.I.R. A copy of letter dated 17th July, 2002 (Exh.C) submitted by the second Respondent to the Senior Inspector of police, Economic Offences Wing, C.I.D., Mumbai discloses that there was a complete settlement between the applicant and the second respondent. Along with the said letter, the second Respondent forwarded a copy of Settlement Deed and stated that he had no grievance whatsoever against the Applicant/accused in relation to the complaint bearing C.R.No.87/2000. A true translations of statement dated 1st January, 2004 of the second Respondent recorded by Shri. G. S. Gode, Police Sub-Inspector Economic Offences Wing, C.I.D., Mumbai is annexed to the application.

6. The perusal of the aforesaid documents shows that in view of the settlement, the second Respondent agreed not to prosecute the Criminal complaint against the Applicant. There is no dispute about the factual assertions made before this Court by the learned advocate for the Applicant. Criminal case No.54/PW/2004 arising out of the F.I.R. lodged by the second respondent is pending in the Court of the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. Now, no purpose will be served by proceeding with the said complaint as against the Applicant. Continuation of the said complaint against the Applicant will cause sheer harassment to the parties. Therefore, this is a fit case for exercising power under Section 482 of the said Code.

7. Hence, I pass the following order.

O R D E R

A. The proceedings of Criminal case No.54/PW/2004 arising out of C.R.No.87/2000 registered with Economic Offences Wing, C.I.D.,Mumbai pending on the file of the learned Additional Chief Metropolitan

Magistrate, 19th Court, Esplanade, Mumbai is quashed and set aside as against the applicant.

B. The learned Magistrate is, however, free to proceed with the said case as against other accused, if any.

C. The Application is accordingly allowed.

D. Writ of this order be forwarded immediately.

(A.S.OKA, J.)